



Arizona Homestead Protection

(A.R.S. §§ 33-1101 – 33-1105)

Office of the Staff Judge Advocate, Luke AFB, AZ, (623) 856-6901

Arizona Homestead Protection is a set of state laws designed to protect the value of homes of state residents from attachment, execution, and forced sale. If applicable, homestead protection applies immediately as a matter of law and no additional work is required for a person to claim the exemption.

What It Protects Against

1. Attachment. This is the legal process by which a court of law, at the request of a creditor, designates specific property owned by the debtor to be transferred to the creditor or sold for the creditor's benefit.
2. Execution. A writ of execution is an order by the court to take the property of the debtor to satisfy a monetary judgment awarded in civil court.
3. Forced sale. This is a civil court action that forces owners of real property to sell and divide the profits.

For example, homestead protection acts to exempt a person's residence from bankruptcy proceedings under certain conditions. It can also act to prevent the forced sale of a home to meet the demands of creditors.

Eligible Persons and Property

To be eligible for the Arizona Homestead Protection, a person must be at least eighteen years old and reside within the state of Arizona.

The exemption applies to the following types of property, not to exceed \$150,000 in value:

1. A person's interest in their house and the land the house sits on;
2. A person's interest in one condominium or cooperative in which the person resides;
3. A person's mobile home in which they reside; or
4. A person's mobile home in which they reside and the land the mobile home sits on.

A married couple or single person may only hold one homestead exemption at a time. If a married couple lived together and then divorced, the total exemption allowed for that residence or to either or both persons cannot exceed \$150,000.

The exemption automatically applies to a person's interest in identifiable cash proceeds from the voluntary or involuntary sale of a property. This exemption continues for 18 months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever is shorter. Failure to use the cash proceeds on a new home within 18 months could open the proceeds up to creditors.

Multiple Properties

If a person has more than one property interest to which a homestead exemption may apply, a creditor may require the person to designate which property is protected by the exemption.

To do this, the creditor must demand designation by sending a letter by certified mail to each address of the person which may be protected by the exemption. The person must then designate which property is exempt by recording a homestead exemption in the County Recorder's Office where the property is located or by sending the creditor a certified letter within 30 days. If the person fails to respond, the person may only assert the exemption by recording a claim in the County Recorder's Office.

Exceptions to Homestead Protection

A homestead is not exempt from the following:

1. A consensual lien such as a mortgage, deed of trust, or contract of conveyance;
2. A lien for labor or materials;
3. A lien for child support arrearages or spousal maintenance arrearages; or
4. A court order or other lien that may be satisfied from the equity of the debtor exceeding the \$150,000 homestead exemption. (For example, a person that has \$300,000 equity in a home may receive homestead protection for \$150,000, with the remaining \$150,000 being subject to court orders or other liens.)

Losing Homestead Protection

A person may lose homestead protection by doing any of the following:

1. Declaring abandonment or waiver of homestead protection by recording a declaration of abandonment or waiver with the County Recorder's Office where the property is located;
2. Transferring the homestead property by deed of conveyance or contract for conveyance; or
3. Permanently moving from the homestead property or the state where the homestead property is located.

A person may move from the homestead for up to two years without triggering abandonment or waiver of the homestead exemption.